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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,251	03/08/2001	Andrew Paul Maxwell Salmon	1171/39247/91	5561

7590 07/12/2004

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EXAMINER

FOX, JOHN C

ART UNIT PAPER NUMBER

3753

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

**Application No.**

09/802,251

**Applicant(s)**

SALMON ET AL.

**Examiner**

John Fox

**Art Unit**

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 and 20-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12/10, 13, 20-31 is/are rejected.
- 7) ☒ Claim(s) 11, 12/11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 3753

This action is responsive to the communication filed May 10, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-10, 12/10, 13 and 20-31 are rejected under 35 U.S.C. 103 as being unpatentable over Barsky '896(US 5,649,896) in view of Moll et al '003 (US 5,817,003) and further in view of Beld et al '570 (US 3,858,570) and Donnelly et al '002 (US 5,817,002).

Barsky '896 teach an incubator with electrothermal covers 68, 69, sides 24, 26, 28, 30, and element 77 which goes under mattress 76, all of which are controlled to provide radiant heat to the infant when the overhead radiant warmer is off, or in addition to the overhead warmer. Barsky '896 also provide humidity and control of that. Barsky '896 teaches controlling the heaters in response to sensors but does not talk about the infants skin temperature. Moll et al '003 show an incubator including a radiant heater 56 and controller 200 for controlling the heater 56, among other things, so the skin temperature is maintained at a set point, see column 9, lines 12-16, for example 35 C, +/- 0.3 C. Moll et al use a temperature probe 202 attached to the baby. It would have been obvious for one of ordinary skill in the art to have used such a control system as taught by Moll et al in the incubator of

Art Unit: 3753

Barsky '896 to desirably keep the infants skin temperature at the desired set point, or range.

Beld et al '570 (US 3,858,570) teach an incubator with an overhead heater 240 in a rigid, rounded hood. It would have been obvious for one of ordinary skill in the art to have used such a rigid, rounded hood and interior heater in the incubator of Barsky '896, as modified, to make it easier to see into the incubator or to reduce sharp edges hazardous to nursery personnel.

Donnelly et al '002 teach an incubator where all or parts of the cover can be a liquid crystal light shutter to allow selective darkening of the incubator, see column 5, lines 40-45. It would have been obvious for one of ordinary skill in the art to have provided such liquid crystal light shutters in the covers 68, 69 of Barsky '896, as modified, to similarly allow for the selective darkening of the Barsky '896 incubator. As to claim 4, it is considered an obvious matter of design choice to make the frames of the covers from extruded aluminum, for example, which would be opaque. As to claim 12, Barsky '896 teaches thermal sensor 80 at the top of the mattress. It would be obvious to use this as the skin sensor.

Art Unit: 3753

Claims 11 and 12/11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory

Art Unit: 3753

period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fox whose telephone number is 703-308-2595. The examiner can normally be reached on Maximum Flextime.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherble can be reached on 703-308-1257. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/802,251  
Art Unit: 3753

Page 6



John Fox

Primary Examiner

Art Unit 3753

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